

Regular Session, 2006

SENATE BILL NO. 742 (Substitute for Senate Bill No. 105 by Senator Marionneaux)

BY SENATORS MARIONNEAUX, DARDENNE, FIELDS, JONES AND ULLO

ENVIRONMENTAL HEALTH. Prohibits and penalizes smoking in public buildings, schools, other public places, and inside places of employment. (gov sig)

AN ACT

To enact Part LXIII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1300.251 through 1300.253, 1300.255, 1300.261 through 1300.263, and to repeal Part XLII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1300.21 through 1300.28, and Part XLIV of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1300.41 through 1300.48, relative to prohibiting and penalizing smoking in certain places; to provide relative to the preservation and improvement of the health, comfort, and environment of the people of the state by limiting exposure to tobacco smoke; to create the Louisiana Smokefree Air Act; to provide relative to purposes, definitions, restrictions, and exceptions; to prohibit certain activity and to provide penalties for violation; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part LXIII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1300.251 through 1300.253, 1300.255, 1300.261 through 1300.263, is hereby enacted to read as follows:

1 PART LXIII. LOUISIANA SMOKEFREE AIR ACT

2 SUBPART A. GENERAL PROVISIONS

3 §1300.251. Short title

4 This Part shall be known and may be cited as the "Louisiana Smokefree
5 Air Act."

6 §1300.252. Purpose

7 The legislature finds and determines that it is in the best interest of the
8 people of this state to protect nonsmokers from involuntary exposure to
9 secondhand smoke in most indoor areas open to the public, public meetings,
10 restaurants, and places of employment. The legislature further finds and
11 determines that a balance should be struck between the health concerns of
12 nonconsumers of tobacco products and the need to minimize unwarranted
13 governmental intrusion into and regulation of private spheres of conduct and
14 choice with respect to the use or nonuse of tobacco products in certain
15 designated public areas and in private places. Therefore, the legislature hereby
16 declares that the purpose of this Part is to preserve and improve the health,
17 comfort, and environment of the people of this state by limiting exposure to
18 tobacco smoke.

19 §1300.253. Definitions

20 A. For the purposes of this Part, the following terms shall have the
21 following meanings unless the context clearly indicates otherwise:

22 (1) "Bar" means a business that holds a Class A-General retail permit
23 and the primary purpose of such business is to serve alcoholic beverages for
24 consumption by guests on the premises and in which the serving of food is only
25 incidental to the consumption of those beverages, including but not limited to,
26 taverns, nightclubs, cocktail lounges, and cabarets.

27 (2) "Business" means any corporation, sole proprietorship, partnership,
28 limited partnership, professional corporation, enterprise, franchise, association,
29 trust, joint venture, or other entity.

1 (3) "Department" means the Department of Health and Hospitals.

2 (4) "Employer" means an individual or a business that employs one or
3 more individuals.

4 (5) "Enclosed area" means all space between a floor and ceiling that is
5 enclosed on all sides by solid walls or windows, exclusive of doorways, which
6 extend from the floor to the ceiling.

7 (6) "Local governing authority" means a municipal or parish governing
8 authority.

9 (7) "Place of employment" means an area under the control of an
10 employer that employees normally frequent during the course of employment,
11 including, but not limited to, work areas, employee lounges, restrooms,
12 conference rooms, meeting rooms, classrooms, employee cafeterias, hallways,
13 and vehicles. A private residence is not a place of employment unless it is used
14 as a licensed child care, adult day care, or health care facility.

15 (8) "Public building" means any building owned or operated by any of
16 the following:

17 (a) The state, including the legislative, executive, and judicial branches
18 of state government.

19 (b) Any parish, city, or town, or instrumentality thereof, or any other
20 political subdivision of the state, special district, authority, commission, or
21 agency.

22 (c) Any other separate corporate instrumentality or entity of state or
23 local government.

24 (9) "Public place" means an enclosed area to which the public is invited
25 or in which the public is permitted which is not a public building, including but
26 not limited to banks, educational facilities, health care facilities, hotel and motel
27 lobbies, laundromats, public transportation facilities, reception areas,
28 restaurants, retail food production and marketing establishments, retail service
29 establishments, retail stores, shopping malls, sports arenas, theaters, and

1 waiting rooms.

2 (10) "Restaurant" means an eating establishment, including but not
3 limited to, coffee shops, cafeterias, sandwich stands, and school cafeterias,
4 which gives or offers for sale food to the public, guests, or employees, as well as
5 kitchens and catering facilities in which food is prepared on the premises for
6 serving elsewhere. The term "restaurant" shall include a bar within the
7 restaurant.

8 (11) "Retail tobacco business" means a business utilized primarily for
9 the sale of tobacco products and accessories and in which the sale of other
10 products is incidental.

11 (12) "School" means any elementary or secondary school building, the
12 campus of any school, except for a limited designated outdoor area that has
13 limited exposure to students, any buildings on the campus, and all school buses.

14 (13) "Secondhand smoke" means smoke emitted from lighted,
15 smoldering, or burning tobacco when the smoker is not inhaling, smoke emitted
16 at the mouthpiece during puff drawing, and smoke exhaled by the smoker.

17 (14) "Smoking" means inhaling, exhaling, burning, carrying, or
18 possessing any lighted tobacco product, including cigarettes, cigars, pipe
19 tobacco, and any other lighted combustible plant material.

20 SUBPART B. PROHIBITIONS AND EXEMPTIONS

21 §1300.255. General smoking prohibitions; exemptions

22 A. Except as permitted by Subsection B of this Section, no person shall:

23 (1) Smoke in any public building.

24 (2) Smoke in any school.

25 (3) Smoke in any public place and in any enclosed area within a place of
26 employment.

27 (4) As an employer, knowingly permit smoking in any enclosed area
28 within a place of employment.

29 B. Nothing in this Part shall prohibit smoking in any of the following

1 **places:**

2 **(1) Private homes, private residences, and private automobiles; except**
3 **that this Subsection shall not apply if any such home, residence, or vehicle is**
4 **being used for child care or day care or if a private vehicle is being used for the**
5 **public transportation of children or as part of health care or day care**
6 **transportation in which case smoking is prohibited.**

7 **(2) Limousines under private hire.**

8 **(3) A hotel or motel room designated as a smoking room and rented to**
9 **a guest; provided that not more than twenty percent of rooms available for rent**
10 **to guests in a hotel or motel may be designated as smoking rooms.**

11 **(4) Any retail tobacco business.**

12 **(5) Any bar.**

13 **(6) The outdoor area of places of employment; except that the owner or**
14 **manager of such business may post signs prohibiting smoking in any such**
15 **outdoor area, which shall have the effect of making that outdoor area an area**
16 **in which smoking is prohibited under the provisions of this Part.**

17 **(7) Private and semiprivate rooms or apartments in nursing homes,**
18 **assisted living residences, and other long-term care facilities that are occupied**
19 **by one or more persons, who are all smokers and who have requested in writing**
20 **to be placed in a room where smoking is permitted; provided that smoke from**
21 **such rooms or apartments does not infiltrate into areas where smoking is**
22 **prohibited under the provisions of this Part.**

23 **(8) Designated smoking areas in which gaming operations are permitted**
24 **to occur upon a riverboat, at the official gaming establishment, at a facility**
25 **licensed for the operation of electronic video draw poker devices, at an eligible**
26 **facility licensed for the operation of slot machines, by a licensed charitable**
27 **organization, or at a pari-mutuel wagering facility or off-track wagering facility**
28 **which is licensed for operation and regulated under the provisions of Chapters**
29 **4 and 11 of Title 4 and Chapters 4, 5, 6, and 7 of Title 27 of the Louisiana**

1 Revised Statutes of 1950, or any other gaming operations authorized by law,
2 except that smoking shall be prohibited in all restaurants that are located within
3 the facilities where gaming operations are conducted.

4 C. An individual, person, entity, or business subject to the smoking
5 prohibitions of this Section shall not discriminate or retaliate in any manner
6 against a person for making a complaint regarding a violation of this Section or
7 for furnishing information concerning a violation to an enforcement authority.

8 D. Nothing in this Part shall be construed to restrict the power of any
9 parish, city, town, or village to adopt and enforce additional local laws,
10 ordinances, or regulations that comply with at least the minimum applicable
11 standards to establish smokefree public places as set forth in this Part.

12 **SUBPART C. PENALTIES AND RULES AND REGULATIONS**

13 **§1300.261. Notice of prohibition of smoking**

14 A. "No smoking" signs or the intentional "No smoking" symbol
15 consisting of a pictorial representation of a burning cigarette enclosed in a red
16 circle with a red bar across it shall be clearly and conspicuously posted by the
17 owner, operator, manager, or other person in control in every public building,
18 public place, and place of employment where smoking is prohibited by this Part.

19 B. The owner, operator, manager, or other person in control shall
20 remove all ashtrays from any area where smoking is prohibited by this Part.

21 C. The Department of Health and Hospitals may treat a violation of this
22 Section as a deficiency to be assessed against any licensee or facility over which
23 it has statutory jurisdiction.

24 **§1300.262. Enforcement; penalties**

25 A.(1) Any violation of any prohibition in R.S. 40:1300.255(A) may be
26 cited by any law enforcement officer by the issuance of a citation and summons
27 to appear before a court of proper jurisdiction.

28 (2) Such citations shall be in a form such that there shall be retained in
29 each book of citations a receipt and each shall have a copy to be deposited by

1 the law enforcement officer with a court having jurisdiction over the alleged
2 offense.

3 (3) Upon the deposit of the copy, the court shall notify the alleged
4 violation of the time and place of his hearing or of his opportunity to plead guilty
5 by the payment of his specified fine. Failure to appear, unless the fine is paid,
6 may be punished within the discretion of the court as contempt of court.

7 B.(1)(a) Any person who is guilty of a violation of the prohibition in R.S.
8 40:1300.255(A)(1) and (2) shall, upon a first offense, be fined one hundred
9 dollars.

10 (b) Any person who is guilty of violating such prohibition a second time
11 shall be fined two hundred dollars.

12 (c) Any person who is guilty of violating such prohibition a third or
13 subsequent time shall be fined three hundred dollars.

14 (2)(a) Any employer who is guilty of a violation of the prohibition in R.S.
15 40:1300.255(A)(3) shall, upon a first offense, be fined three hundred dollars.

16 (b) Any employer who is guilty of violating such prohibition a second
17 time shall be fined six hundred dollars.

18 (c) Any employer who is guilty of violating such prohibition a third or
19 subsequent time shall be fined one thousand dollars.

20 §1300.263. Tobacco Control Program Fund; establishment

21 A. One-half of all fines imposed and collected pursuant to this Part shall
22 be transmitted to the office of public health in the Department of Health and
23 Hospitals and shall be deposited by such office in a special fund established in
24 the state treasury to be known as the Tobacco Control Program Fund,
25 hereinafter referred to as "the fund" as provided in this Subsection.

26 B. Out of the funds remaining in the Bond Security and Redemption
27 Fund after a sufficient amount is allocated from that fund to pay all obligations
28 secured by the full faith and credit of the state that become due and payable
29 within a fiscal year, the treasurer in each fiscal year shall pay into the fund an

amount equal to the total amount of fines imposed, collected, and transmitted to the office of public health in the Department of Health and Hospitals pursuant to this Part.

C. The total amount of monies in the fund shall annually be appropriated to the office of public health to be used by such office solely for the purpose of funding the efforts of the office of public health in the Tobacco Control Program.

D. All unexpended and unencumbered monies in the fund at the end of a fiscal year shall remain in the fund and be available for appropriation in the next fiscal year in the same manner as allocated herein. Monies in the fund shall be invested as provided by law. After compliance with the provisions of law concerning the Bond Security and Redemption Fund, interest earned on the investment of monies in the fund shall be credited to the fund.

Section 2. Part XLII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1300.21 through 1300.28 and Part XLIV of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1300.41 through 1300.48, are hereby repealed.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Camille Sebastian Perry.

DIGEST

Proposed law authorizes the creation of the Louisiana Smokefree Air Act and provides for definitions.

Proposed law provides that the purpose of the Act is to preserve and improve the health, comfort, and environment of the people of this state by limiting exposure to tobacco smoke.

Proposed law prohibits smoking in public places, schools, school buses, and school campuses, except for a limited designated outdoor areas, public buildings, and enclosed

areas within places of employment.

Proposed law does not prohibit smoking in the following places:

- (1) Private homes, private residences, and private automobiles; except that this Section will apply if any such home, residence, or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation.
- (2) Limousines under private hire.
- (3) A hotel or motel room designated as a smoking room and rented to a guest, provided that not more than 20% of rooms rented to guests shall be designated as smoking.
- (4) Any retail tobacco business.
- (5) Any bar.
- (6) The outdoor area of any business, except that the owner or manager of such business may post signs prohibiting smoking in any such outdoor area, which will have the effect of making that outdoor area a non-smoking area.
- (7) Private and semiprivate rooms or apartments in a nursing home, assisted living residence, or any other long-term care facility that is occupied by one or more persons who are all smokers and who have requested in writing to be placed in a smoking room.
- (8) Horse racing tracks, offtrack wagering facilities, places licensed for the holding of charitable raffles, bingo, keno, pull-tabs, and electronic video bingo, riverboats, the land-based casino, a licensed establishment for the operation of video draw poker machines, and an eligible facility licensed to conduct slot machine gaming, except that smoking shall be prohibited in all restaurants located in such facility.

Proposed law prohibits an individual, person, entity, or business subject to the smoking prohibitions to discriminate or retaliate in any manner against a person for making a complaint of a violation or furnishing information concerning a violation to a person, entity, or business or to an enforcement authority.

Proposed law prohibits this Act from being construed to restrict the power of any parish, city, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smokefree public places.

Proposed law subjects any person who smokes in a prohibited area to a penalty of \$100 for the first violation, \$200 for a second offense, and \$300 for all subsequent offenses. Subjects any employer who knowingly permits smoking in the enclosed area of a place of employment to a penalty of \$300 for a first offense, \$600 for a second offense, and \$1000 for all subsequent offenses.

Proposed law provides for law enforcement officers to be able to cite violations by the issuance of a citation and summons to appear before a court of proper jurisdiction. Requires the citations to be in a form such that there shall be retained in each book of citations a receipt and provides that each citation shall have a copy to be deposited by the law enforcement officer with a court having jurisdiction over the alleged offense. Requires the court, upon the deposit of the copy, to notify the alleged violator of the time and place of his hearing or of his opportunity to plead guilty by the payment of his specified fine. Permits the court to punish failure to appear, unless the fine is paid, as contempt of court.

Proposed law establishes the Tobacco Control Program Fund as a special fund in the state treasury and requires that one-half of all fines collected shall be transmitted to the office of public health in DHH and deposited by the office in the fund. Provides that after all requirements of the Bond Security and Redemption Fund are met, an amount equal to one-half of all such fines shall be deposited in the fund and annually appropriated to the office of public health to be used to fund the Tobacco Control Program.

Proposed law repeals present law provisions regulating smoking in the office workplace and in certain public places to avoid any confusion or conflict with the Louisiana Smokefree Air Act.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 40:1300.251-1300.253, 1300.255, 1300.261-1300.263; repeals R.S. 40:1300.21 through 1300.28 and R.S. 40:1300.41 through 1300.48)